IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.MC.No. 2370 of 2006()

CC.198/2005 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD

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PETITIONER: 2ND ACCUSED:

V. VIJAYAKUMAR, S/O. APPU NAIR,
RESIDING AT 32/671 A, SAYEE NAGAR,
2ND MAIN ROAD, VIRUGAMPAKKAM,
CHENNAI-600 092, TAMILNADU.

BY ADV. SRI.PRAVEEN.H.
SRI.G.HARIHARAN

RESPONDENTS: STATE:

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1. THE CIRCLE INSPECTOR OF POLICE,
TOWN NORTH POLICE CIRCLE, BIG BAZAR,
PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

3. INSPECTOR OF POLICE, CENTRAL CRIME
BRANCH, EGMORE, CHENNAI-08.

4. B.P.SHERAFFUDIN, S/O.LATE B.P.USMAN,
M/S.MENCO.ELECTRICALS (P) LTD.,
SUMAYYIA MANZIL, SHORNUR ROAD,
CHAKKATHARA POST, PALAKKAD
KERALA
(ADDL.R4 IMPLEADED AS PER ORDER DT.22/8/06 IN CR.M.A.NO.4428/06)

BY PUBLIC PROSECUTOR SRI.GIKKU GEORGE
SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2370 of 2006

Dated this the 5th day of December 2006

O R D E R

The petitioner is the second accused in a prosecution initiated on the basis of a final report submitted by the police, after due investigation. The crime was registered initially on the basis of a private complaint filed by the defacto complainant which was referred to the police under Section 156(3) Cr.P.C. After completing the investigation, final report has been filed before the court and the learned Chief Judicial Magistrate, Palakkad has taken cognizance of the offence as C.C.No.198/2005.

2. The petitioner has already appeared before the learned Magistrate, it is submitted. He was arrested and produced before the learned Magistrate and was released on bail, submits the learned counsel for the petitioner. The petitioner has now come to this court with this petition under Section 482 Cr.P.C to quash C.C.No.198/2005 on the file of the learned Chief Judicial Magistrate, Palakkad.

3. What are the reasons? The learned counsel for the petitioner submits that the allegations are false. The allegations are raised by the defacto complainant solely as retaliation for another crime registered in the state of Tamilnadu against the complainant. In short, the contention is that the allegations are false and are raised

only for the purpose of retaliation.

4. I am certainly of the opinion that the mere contention that the allegations are false cannot persuade this court to invoke the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Chief Judicial Magistrate and claim discharge under Sections 239 and 240 Cr.P.C. A person, against whom a prosecution is initiated which he thinks is unjustified, can certainly request the learned Magistrate to invoke the powers under Section 239/240 Cr.P.C to discharge him and to save him of the trauma of continued proceedings against him. In every such case, where there is sufficient reason for discharge or acquittal, this court will certainly not be inclined to invoke its jurisdiction under Section 482 Cr.P.C. The petitioner can and must, according to me, appear before the learned Chief Judicial Magistrate and claim discharge under Section 239 Cr.P.C. Needless to say, the learned Magistrate must consider the petitioner's claim for discharge in accordance with law and expeditiously.

With the above observations, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006